



STATEMENT

UPR Pre-session on Armenia

Geneva, 11 December 2019

Delivered by: Path of Law NGO

1. Presentation of the Organisation

This statement is delivered on behalf of “Path of Law”, a non-governmental, independent human rights Organisation set up to advance rule of law and protect human rights in Armenia. The organization units under its mission young legal scholars, researchers and international human rights lawyers. The scope of activities includes research, legal analysis, monitoring, advocacy, strategic litigation and engagement in public policy making.

2. Consultations

Consultations on problems of the judiciary and main directions for legal and judicial reforms were organized by Civil Society organizations in July and in September. This statement reflects the consolidated approaches of 13 participant organizations.

3. Plan of the Statement

The statement addresses the following issues pertaining to the Judiciary: (1) Judicial independence (also with a focus on the anti-corruption institutions and procedures), (2) Visit of the Special Rapporteur on the independence of judges and lawyers, (3) Operation of the Constitutional Court.

4. Statement

(1) Judicial independence

A. Follow-up to the review

During the UPR 2015 many countries, including the USA, Germany, Czech Republic, Lithuania, the Netherlands, France and Sweden, gave recommendations regarding separation of executive and judicial powers, as well as the strengthening of the independence of the latter.

The Constitutional reform of 2015 made radical changes to this direction, focusing on functional, structural and social independence of the judiciary. Particular emphasis was paid on judicial self-governance, empowering a new body, the Supreme Judicial Council, to lead the appointment, promotion, and dismissal of judges, as well as the disciplinary actions against the judges. These changes have been further affirmed through Constitutional Laws.

In spite of legal changes, the operation of the judiciary is not flawless. This is due to several factors, including well-evidenced practices of “telephone justice” (https://www.youtube.com/watch?time_continue=16&v=hT087oDr3AM&feature=emb_title), open threats and influences from the Executive, inconsistent and, even more, discriminate procedures of removals. Meanwhile, administration of court cases is poor in the light of limited institutional capacity, understaffed courts, overloaded judges, non-trained judicial staff, limited budget and absence of effective electronic tools. The policy documents pertaining to the judiciary are not developed in line with evidence-based policy principles. The new Strategy of Legal and Judicial reforms lacks clearly defined objectives, adequate and sufficient activities, as well as measurable results.

B. New developments since the review

The Government and the Parliament, representing the ruling party (My Step), use immense resources and energy to enslave the judiciary.

(A) In May 2019 the PM, Nikol Pashinyan publicly threatened the judiciary and immediately resorted to compelled resignations.

(B) On 20th of May 2019, the PM instructed people to block the entrances and exits of all courthouses, including the Constitutional Court. Administrative resources were used to implement this “operation”. About 1100 citizens, among them incumbent members of parliament, public officials, civil servants, blocked the entrances of the courts. He personally went to the Kentron Court and by his own example encouraged his supporters. The police showed inaction. Physical access to court building was denied to citizens seeking justice, lawyers representing their clients and most importantly judges. Judges attempting to enter the court building were subjected to verbal and physical violence. Though they reported on crime, the launch of criminal cases was rejected.

(C) The Special Investigation Service has been conducting investigative and other actions with respect to defiant judges in the framework of fabricated criminal cases. The office of the judge Davit Grigoryan ordering the release of the second President from custody was searched in blatant violations of law. The searched was conducted on the basis of a criminal case that was initiated in fall of 2018, on the account of an alleged forgery of a summon, but rejected by the General Prosecutor’s Office in February. It turned out the General Prosecutor revoked the previous rejection decision and initiated criminal prosecution against the judge immediately after the court decision.

(D) The Parliament made amendments to the Law on the Corruption Prevention Commission (CPC) and vested the CPC with the additional power of “vetting” the judges. Meanwhile, the Government remarkably weakened the level of independence of the CPC. In September 2019, the Parliament abolished the transparent and objective appointment of the Commissioners and alleviated the requirements for the Commissioners in full ignorance of UNCAC, Jakarta statement, OECD ACN and GRECO recommendations.

	CPC Law adopted before the Revolution	CPC amendments after the Revolution
Eligibility criteria for the Commission member	<ul style="list-style-type: none"> • Minimum age of twenty-five • higher education • 10 years of professional experience • Recognition 	<ul style="list-style-type: none"> • Any age • higher education • No professional experience • 5 years of general working experience (no relevance whether in public or private sector) • No recognition
Order of CPC formation	<ul style="list-style-type: none"> • Open and transparent competition process • Nomination by the Competition board based on a three-stage objective selection process (documentary check, testing and interview) • Election by the Parliament (simple majority) 	<ul style="list-style-type: none"> • No competition • Direct nominations without any selection process (candidates by 3 parliamentarian political parties, 1 by Government, 1 by the SJC) • Election by the Parliament (simple majority)

C. Recommendations

1. Institute criminal cases to investigate and hold liable those, who prevented judges, judicial servants and case parties from entering the courthouses on 20 May 2019. Specific focus should be made on public officials and servants.
2. Investigate objectively and thoroughly all incidences of interference with the administration of justice (including with the constitutional justice).
3. Take enforcement measures, to protect the reputation and dignity of all judges with due respect of non-selective justice principle.
4. Immediately revise the selection procedure of the CPC by introducing open, competitive, transparent and objective appointment of Commissioners, free from political interference, and establish a Commission in line with international commitments within shortest terms.

(2) Visit of the Special Rapporteur on the independence of judges and lawyers

A. Follow-up to the review

Germany recommended the invitation of the Special Rapporteur on the independence of judges and lawyers to perform an official country visit (120.46). The reply of Armenian Government was supportive: “120.46– Supported; Armenia submitted open invitations to the special procedures of the UN in 2006. Accordingly, any Special Rapporteur can visit Armenia”.

B. New developments since the review

Despite unprecedented developments over Armenian judiciary and critical reaction of international community on the situation, no visit of the Special Rapporteur on the independence of judges and lawyers happened, in full ignorance of the recommendation at stake. Path of Law NGO sought the pro-active role of the Special Rapporteur, by informing him in a written letter on the alarming situation on the ground and requesting his immediate visit. He was also reminded of the Armenian Government’s stand that the Government’s consent/invitation is implied due to an open invitation, and any visit can be occurred without further formalities. The letter remained unaddressed, while the visit-not implemented.

C. Recommendations

1. Conduct an immediate country visit of the Special Rapporteur on the independence of judges and lawyers.

(3) Operation of the Constitutional Court

A. Follow-up to the review

During the previous review no specific recommendation was given to ensure the independence and proper functioning of the Constitutional Court, though it was implied, as the Constitutional Court is a part of Armenian Judiciary. Following the Velvet revolution open political conflict began between the Parliament and the Government on the one side and the Constitutional Court on the other side (resulting from the constitutional court’s decision to rule on admissibility of the second President complaint and seek the advisory opinions of the ECtHR and the Venice Commission), which undermines the rule of law and threatens the proper functioning of the Constitutional Court.

B. Developments over the Constitutional Court since 2018

In order to fill the only vacant position of a judge to the Constitutional Court available after the Velvet Revolution, the President under an influence of the ruling party, in violation of procedural rules, nominated the candidacy of a partisan Vahe Grigoryan, who was elected by the Parliament. However, during his inauguration he declared himself as the President of the Court. The ruling party supported this statement and urged the acting President and remaining 6 members to leave their posts. A government-led group of 20 people gathered before the Constitutional Court and attacked the judges. These attacks remained unpunished.

The Venice Commission reacted to this self-proclamation. The following is stated in the session report: “The Commission was informed that a newly elected judge of the Constitutional Court had questioned the legitimacy of 7 of the 9 judges of the Court, who had been elected prior to the entry into force of the 2015 constitutional amendments. It was disturbing that this statement by the judge had been applauded in parliament and there might be a risk of interference with the mandates of the sitting judges”.

Later, the Ministry of Justice, eroding the professional dignity of a judge, initiated legislative changes aimed at early resignation of the Constitutional Court judges. They are offered a bargain to maintain their salaries until the age of 70 and get pension afterward in exchange of their resignation within two months from the enactment of this law. In other words, the judges are being bribed on the account of tax payers money to distort their free will of resignation for the interests of the ruling party.

In September 2019 ruling party faction initiated a process of termination of the powers of the President of the Constitutional Court. The main opposition refrained from voting in the Parliament. Meanwhile, prominent figures of the ruling party made public threats, such as “And keep in mind, after being aware of the intention of the Parliament to terminate the powers of any official, that official shall immediately, without any discussion, resign, regardless of the degree of their independence. There is no “match” against us. The President of the Constitutional Court will not hold office, period. I hope he will go on his own. He still can”.

On 4 October 2019, a Member of Parliament Arman Babajanyan (who left the Parliamentarian opposition faction) reported on usurpation of the Constitutional Court powers by a group of persons. He stated that the acting President of the Court Hrayr Tovmasyan seized the power of the Court. On 17 October 2019, the Special Investigation Service initiated a politically motivated criminal case under Article 300(1) of the RA Criminal Code based on the announcement (See the Annex on the details of the case).

On 29 October 2019 the President of the Venice Commission made a statement, urging Armenian authorities to exercise restraint, mutual respect and constructive institutional co-operation in order to de-escalate this worrying situation and re-establish the normal operation of the constitution of Armenia (<https://www.venice.coe.int/webforms/events/?id=2837>). Currently the Government plans constitutional amendments of merging the Constitutional Court with the Court of Cassation in a desperate attempt to finally “capture” the Constitutional Justice.

C. Recommendations

1. Respect the role and prerogatives of the Constitutional Court and re-establish the normal operation of the Constitution.
2. Respect the irremovability of the Constitutional Court judges and stop all attempts in substituting the legitimate composition of the court with persons influenced by the political majority of the day.
3. Pass the legislative provision on fair, transparent and competitive selection procedures (including public and open calls) for the nominations of the candidates by the President and the Government (similar to the procedure for the election of judges to the European Court of Human Rights) and endure its implementation.

Thank you for your attention.